



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

December 30, 2016

Ms. Leslie Patterson  
Remedial Project Manager  
U.S. Environmental Protection  
Agency, Region 5  
Superfund Remedial Response,  
SR-6J  
77 West Jackson Boulevard  
Chicago, IL 60604

**RE: South Dayton Dump & LF, Moraine  
Remediation Response  
Correspondence  
Remedial Response  
Montgomery County  
557000752003**

**Subject: Ohio EPA South Dayton Dump and Landfill CERCLA Site (Moraine, Ohio) Institutional Controls – Environmental Covenant Review, April 16, 2015**

Dear Ms. Patterson:

On April 16, 2015, the Ohio Environmental Protection Agency (EPA) Division of Environmental Response and Revitalization, received the South Dayton Dump and Landfill CERCLA Site Institutional Controls – Environmental Covenant (EC) submitted by Thompson Hine, on behalf of Kelsey Hayes Company, Hobart Corporation, and NCR Corporation (Settling Parties) for the South Dayton Dump and Landfill Site located in Moraine, Montgomery County, Ohio (Site). On July 5, 2016, you requested that Ohio EPA provide comments on the submittal. Ohio EPA is providing the following comments to assist in completing an approvable document.

### **Comments on Cover Letter**

The cover letter argues for instituting an environmental covenant (EC) as soon as possible, rather than waiting to evaluate the EC as part of remedies under the feasibility study (FS) and ultimately executing the EC along with the final remedy selection. While it is appropriate in some instances to implement an EC before a remedy is selected, Ohio EPA does not support the immediate implementation of an EC at this site. Instead, Ohio EPA supports U.S. EPA's proposal to issue a Decision Document that recognizes that institutional controls are an essential component of an anticipated remedial action for the site.

In general, an EC is implemented in conjunction with the final remedy at a site. While the final remedy eliminates exposure pathways, the EC creates activity and use limitations to ensure on-going protectiveness of the remedy. In some cases, an EC is implemented prior to remedy selection; but such ECs should anticipate revision following remedy selection, recognizing the selected remedy will ultimately shape the

content of the EC. The rationale the Settling Parties provide in their cover letter, and the content of their proposed EC, appear to reverse this order by using the EC to shape the remedy. Ohio EPA disagrees with this logic because an FS is the appropriate method for considering all relevant remedial options.

Based on the remedies evaluated in an FS, institutional controls (such as an EC) may be determined to be a critical component of a site remedy. For example, where a landfill cap is the selected remedy for a site, it will likely be determined that an EC would be required to ensure that the current and future property owners are aware of the obligation to perform the necessary upkeep and integrity of the cap. However, the FS has not yet been produced for this Site and no remedy has been selected, so we cannot effectively determine the scope of the activity and use restrictions needed in an EC. Until we make such a determination, no EC should be implemented.

### **Comments on the Environmental Covenant**

As stated above, Ohio EPA does not agree with the Settling Parties that implementing an EC right now is an appropriate course of action. Instead, Ohio EPA supports the issuance of a Decision Document that will include a determination by U.S. EPA that institutional controls, imposed under an Office of Enforcement and Compliance Assurance covenant, will be an essential component of an anticipated remedial action at this site. Therefore, Ohio EPA considers any review of the provided EC draft to be premature. Nevertheless, in an effort to simplify the review of a future EC, Ohio EPA is providing the following comments.

### **General Comments**

1. The Cover Letter states that the Settling Parties' draft EC meets the requirements of Ohio Revised Code (RC) Chapter 5301, and lists specific information included in its submitted draft. However, most of the information listed is absent in the draft EC. Blank spaces are not filled in with the necessary specifics, thereby making this draft more of a template than a proposed EC. Missing essential elements of an EC include:
  - a. A detailed legal description of the site, including a clear description of the area to be restricted.
  - b. More detailed information is needed to better describe the land and resource uses that will be restricted.
  - c. The names of the entities that will be executing the document have not been provided. It is important to note that the Settling Parties are not the landowners and there are renters on the properties.

- d. The precise names of the parties involved have not been included in the draft EC (page 1, first sentence, page 2, definition 5).
2. The area subject to the EC has not been provided. Before Ohio EPA can effectively review and comment on the draft, we need to know to what property the EC will apply. Settling Parties should provide the parcel map for the properties to which the EC will apply, and list the acreage of the property that will be subject to the EC.
3. In December 2012, a Situation Assessment was completed and finalized for the South Dayton Dump and Landfill Site. The EC should line up with the expected reuse of the property as outlined in the Situation Assessment. A clause stating the Situation Assessment has been approved should be added and the text and the Situation Assessment should be an attachment to the EC.

### Specific Comments

1. Page 1, paragraph 1: In order to accurately review the EC within the context of the property to which it will apply, it is necessary to list the "Owner and Holder" that will be filing the EC.
2. Page 1, paragraph 1: It is necessary to specify the parcel numbers for the property the EC will cover. The text identifies the property subject to the EC as "*property located within the South Dayton Dump and Landfill Site.*" It is necessary to specify exactly what property within the South Dayton Dump and Landfill Site is subject to the EC. In addition, the text refers to the property subject to the EC as the "*Site.*" Such labeling is confusing as the "*South Dayton Dump and Landfill Site*" is a legally defined term under the Administrative Settlement Agreement and Order on Consent (ASAOC), signed June 2016. Unless it is the intent for the entire Site to be subject to the EC, it is necessary to further describe the actual land within the "*Site*" that is subject to the EC and to label it as the "Property."
3. Page 1, paragraph 2: The landfilling that occurred on the site included commercial and industrial wastes as well as solid wastes; therefore, it is not appropriate to label the landfill as only "*commercial and industrial.*"
4. Page 1, paragraph 3: The date of the signing of the ASAOC will need to be updated as a new ASAOC has been signed.
5. Page 2, definition 5: A list of what property owners will be subject to the EC has not been provided.
6. Page 2, section 2A: Ohio EPA requests that the activity and use limitations be more precise by providing specific limitations to the property. An example of

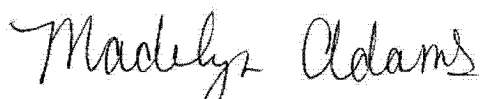
what has been accepted at similar sites in the past includes: *"for any purposes inconsistent with the commercial/retail, light industrial, recreational and other uses specified in the Reuse Framework; in any manner that would interfere with the investigation, monitoring or remediation described in the ASAOC, or in any manner that would be inconsistent with the remedy that may be selected."*

7. Page 3, section 2A: This section should be removed because it references a soil management plan that would be provided by the property owner or transferee. This action is inappropriate for inclusion in an EC as it is not specifying an activity or use limitation. In addition, this action transfers responsibility of managing potentially contaminated site media from the Settling Parties to the property owner or transferee. Note also that a waste management plan and Ohio EPA approval is currently required by Ohio Administrative Code 3745-27-13(A) for any excavation, drilling construction, etc. on the landfill which is outside the scope of EPA approved work plans for investigation and remediation of the site.
8. Page 3, section 2B: This section should be removed as it transfers the responsibility of the installation and maintenance of the vapor intrusion systems to the property owner or transferee. This action is not an activity or use restriction and there is still an ongoing Removal Action at the site (April 2013 ASAOC), which mandates the Settling Parties participation in installation and maintenance of vapor intrusion systems.
9. Page 3, section 2C: The Ohio Voluntary Action Program (VAP) rules have been quoted and should be removed. The site is not eligible for the VAP.
10. Page 3, section 4: Add *"or other applicable law"* after the reference of Ohio RC 5301.91.
11. Page 6, section 11: Ohio EPA will not be a party to the EC, therefore, it is necessary to remove *"and Ohio EPA"* from the first sentence.
12. Page 6, section 11: If the EC is implemented before a final remedy is selected for the site, the requirements of an EC in conjunction with a remedy cannot be scoped. It may be necessary to alter the EC after the selection of the remedy for the site. Therefore, *"It is anticipated that the amendment of this Environmental Covenant"* should be added to this section to ensure that the EC can be revisited to be made compatible with a final remedy once one is selected.
13. Page 7, section 17B: Add *"Manager"* to the blank line, change *"Division of Emergency and Remedial Response"* to *"Division of Environmental Response and Revitalization."*
14. Page 8: Add a signature/notary section for US EPA; add *"This instrument prepared by: [name, address]."* As required by Ohio RC 317.111.

South Dayton Dump and Landfill  
Thompson Hine Environmental Covenant, April 16, 2015  
Ohio EPA Comments  
December 30, 2016  
Page 5 of 5

If you have any questions or would like to meet to discuss the comments, please contact me at (937) 285-6456 or [madelyn.adams@epa.ohio.gov](mailto:madelyn.adams@epa.ohio.gov).

Sincerely,

A handwritten signature in black ink that reads "Madelyn Adams". The signature is written in a cursive, flowing style.

Madelyn Adams  
Site Coordinator  
Division of Environmental Response and Revitalization

MA/tb

cc: Mark Rickrich, DERR, CO  
Clint White, CO, Legal  
Jim Morris, USEPA, Legal